command, comprising the fighting ships love. Messachusetts, Texas, Brooklyn and Marking and having in company the autiliary vessels Minneapolis, St. Paul, Yale and Vixen and a well-laden collier, was, by Commodore Schley's direction, turned about and headed for the home port of Key West, more than seven hundred niles distant, and this when within twentytwo miles of the port of Santiago, where it had been ordered to proceed with all despatch, and where the enemy's ships were

reported to be and actually were.

The second, "disobedience of orders,"
was that Commodore Schley, overtaken in
his retrograde movement by an order
from the Secretary of the Navy, deliberately and knowingly disobeyed that order; this with respect to an important movement

and in time of war.

The third, "inaccurate and misleading official reports,"was that the reason officially

and in time of war.

The third, "inaccurate and misleading official reports," was that the reason officially given by Cemmodore Schley for such retrograde movement and disobedience of orders, i. e., that the Flying Squadron was short of coal, was not true.

The fourth, "failure to destroy vessels of the enemy," was that for three days one or more of the Spanish ships, a part of the hostile force the Commodore had been ent to seek and destroy, lay within reach of the guns of the Flying Squadron, and no endsavor, or no sufficient endeavor, was made to destroy them. And

The fifth, the matter of injustice to a brother officer, involves a point of honor.

Upon all the above-named features, believed by us to be the most important, if not the only really important matters, into which the court made inquiry, the conduct of Admiral Schley was condemned by that most distinguished tribunal. Admiral Dewey and Rear Admirals Benham and Ramsay united in their findings and opinion upon all of these several points, and they united also in the significant recommendation that no further proceedings be had, "in view of the length of time which has elapsed since the occurrence of the events of the Santiago campaign."

The applicant and his counsel, ignoring all these grave matters, now appeal to you—before taking up an entirely new matter which was not in the case—for your action upon certain minor and comparatively unimportant features which were in the case. They specify dilatoriness in the squadron's movement to Cienfuegos and afterward to Santiago; failure while at Cienfuegos to take any adequate steps to ascertain the whereabouts of the Spanish fleet and the effectiveness of the blockades maintained at Cienfuegos and at Santiago. The members of the court differed in their opinion respecting these points, which are obviously of minor significance as compared with the grave matters above set forth, upon which there was not, and in the face of the testimony could not have been, any difference of opinion in the Court. Certain err

1,439):

Q. What other steps had you then in mind to take to discover whether the enemy's fleet was at Clenfuegos, or did you intend o rely upon the Adula? A. Well, before the Adula had come up and was sent to the westward. If that had not occurred, I should probably have sent one of the smaller vessels where, may I ask? A. I would have sent one of the smaller vessels where, may I ask? A. I would have sent one of the smaller vessels where, may I ask? A. I would have sent one of the smaller vessels along the coast to the westward, on account of the memorandum which stated that there was a landing place.

THE QUESTION OF COMMAND.

But these matters have been fully threshed over, and it seems unprofitable here to discuss them further. That they are not the real, or at least the ohief, grounds of the present appeal, from the point of view of the applicant and his counsel themselves, is indicated by the fact that these minor features of the case are discussed in the document before you in some sixteen pages of typewriting, while to the question of command during the battle of Santiago eighty-eight typewritten pages are devoted. A new aspect of this case is thus brought forward not heretofore touched upon by us in argument, because not before the court. To this question of command attention will now be given.

given.

In his letter to the Department, upon which the Court of Inquiry was convened, Admiral Schley did not ask that the question of command at Santiago be determined. It was not one of the questions entered into by the Court of Inquiry, such evidence as relates to it having been merely incidence.

COURT EXCLUDED IT AND WOULD NOT HEAR

The question is one between two officers, Admiral Sampson, then Commander-in-Chief of the North Atlantic squadron, and Admiral Schley, then Commodore, and second in command. In the present appeal the attempt is made to show that Sampson is not entitled to credit for the victory at Santiago, and that it belongs to Schley. question is one between two officers.

scring the inquiry was oscilled by the court the inquiry was oscilled by the court.

This question of command was adverted to in paragraph No. 26 of a paper dated his to paragraph No. 26 of a paper dated his sociation with the Capacitans (Record his sociation with the Capacitans) (Record his sociation with the Capacitans to it we then passed to it we then passed the court upon the passed in the second pages to the passed to it we then additional in the second pages to the passed in the second page of the second in the second pages of the second to make the significant of the second they desired the second pages of the second to make the significant passed for the second the second the second pages of the second the second second the second pages of the second to the second pages of the second the second pages of the second the second second

y printed to the printed request of the set engineering pages 186, 181, 1860 and it will be sent that marters directly ing this question of supersize com-during the battle ware thus kept accurt. The following is an extract the last-mantismed page of the record

how far the New York went east and what she did on that day?

The Judge-Advocate-Do you want to contradict it?

Mr. Rayner-No; we want to prove that she went there.

The President-We do not want that. We have ruled that out.

We have kept the New York out of it.

Upon the Record, pages 1,842-3, appears a communication from counsel for Admiral Sampson containing the following state-ment:

reent:

As counsel for the applicant ignored at times the Court's rulings and spread upon the records arguments reflecting upon Admiral Sampson, we, as his counsel, three separate times, appealed to the Court asking for protection or for permission to appear and defend Admiral Sampson's rights. Each time our request was denied and we were assured that Admiral Sampson was not involved, and finally Admiral Dewey, acknowledging the receipt of one of our letters in which we had appealed to him on the ground of this very question as to who commanded at Santiago, said: "I have to state that while the precept convening this court gives it authority to permit any person whom it may regard as concerned in the investigation to be present. " the Court considers that Admiral Sampson is not an interested party; " and you are further informed that if circumstances arise which in the opinion of the Court render it necessary for Admiral Sampson to be represented, due notice will be sent him.

We admit that the precept as drawn to

We admit that the precept as drawn by the Department was broad enough to have permitted the court to go into this question; but the court did not deem it necessary or proper to do so.

GOVERNMENT OFFERED TO TAKE IT UP In argument before the court from time to time as these questions arose we expressed ourselves as ready and willing to go into them if the court deemed it proper. For example, Record, page 157, we said in

One further word as to a suggestion just made, as to the intention to show that Admiral Sampson was not in this battle. I wish to say we do not understand that the question whether Admiral Sampson was or was not in the battle of Santiago is before the court. If it is, we shall be happy to investigate it. " " Until the case takes that attitude it is improper to spread upon the records arguments and questions which proceed upon the theory that he is in the case.

Again, on page 490 of the Record, we said Again, on page 490 of the Record, we said:

If it is the desire of the court to go into these things, it would, of course, be proper that we should also go into them. It would not only be proper, but it would be necessary. If matter is introduced here which reflects upon any other officer, then of course, his entire conduct must be brought into question.

* We are thoroughly prepared to go into any discussion of them, provided the court desires to so enlarge and extend the scope of this inquiry.

Respecting the attitude of the court, we did not, in Admiral Sampson's behalf, introduce any testimony on the subject. We are, therefore, as unprepared and unqualified to present this question from the standpoint of Admiral Sampson as the court would have been to deal with it had it undertaken to do so, because we do not know, and no man can say what

do not know, and no man can say what Admiral Sampson and his attorneys might have established if they had been heard before the court and had adduced evidence

WHAT SAMPSON'S CASE WOULD HAVE BEEN.

Presumably they would have shown, or undertaken to show, that the night blockade before Santiago, so assiduously maintained by Admiral Sampson, which blockade consisted of an outer crescent line of fighting ships, an inner picket line of lighter vessels, and a close inshore patrol of steam launches, with a battleship, relieved every two hours, stationed directly before the harbor entrance, the searchlights uninterruptedly directed upon the channel; that this night blockade was of such a character as to make it impossible in Admiral Cervera's own opinion, for him to leave the harbor at night; that as the Spanish ships could not come out at night they were forced to face an admirably disposed superior force by day, which meant certain destruction; that the battle, by these judicious preliminary dispositions, was practically won before it was begun; and that credit is accordingly due to the Commander-in-Chief for that.

The importance of a blockade so effective as to prevent a night sortie on the part of Cervera and its bearings upon the result of the battle are ably shown in the following extract from a "Note on Cervera's Strategy," by Capt. Clark of the Oregon (The Century Magazine, May 1899, p. 103): WHAT SAMPSON'S CASE WOULD HAVE BEEN.

It is my judgment that Admiral Cervera should have preferred night to day as the time for the sortie, notwithstanding the searchlight watch so rigidly maintained at the entrance. We could not then have closed in upon him without great danger to ourselves. The firing would have had to be done virtually in the dark for the searchlights (even supposing that others than the be done virtually in the dark, for the searchlights (even supposing that others than the
one regularly in use had been turned on)
would soon have become ineffective on account of the smoke and from the shattering
force of the guns, which probably would
have estinguished them. The direction of
the enemy could thus have been masked,
and as each of our captains would have been
concerned with the risk of his ship being
rammed or torpedoed, our onslight would
have hed a tar different result than it actually
had when full daylight enabled every commander to see what all the others (as well as
the enemy) were doing, and exactl, what
was to be done.

the enemy) were doing, and eracti, what was to be done.

Counsel for Sampson might, furthermore, have claimed that the orders of battle prescribed from time to time during the month of June by him (Becord, page 941, June 2; page 948, June 1; page 944, June 5; and page 958, June 15) making it the duty of the American fleet, if the enemy should try to escape, to "close and engage as soon as possible, article endeavor to sink his vessels or force them to run ashore in the channel," were the orders of battle upon which the Captains of the American fleet acted on July 3, and were in no respect modified by any orders issued or signals made by Commodore Schley during the fight.

As we have stated, none of these matters was gone into by evidence adduced from Admirel Sampson's standpoint, but some evidence was heard by the court, incidentally, and from Admiral Schley's standpoint, on the subject of these orders of battle. In Exhibit A of the Appeal, page 56, the following testimony from Admiral Schley himself is quoted as bearing upon his claim that Sampson's orders of battle were not fully and completely carried cut.

O Now, Admiral I would like to ask you this You said, as I understand you that the shipe charged in according to the original than to said the change! the ships charged in according to the channel? A pain to sink the enemy in the channel? A G With whom was this pian original? Do you know? A That was the senioral order of the tommender the hird during the time of the blockade, but that failed. A That pian fathed because the enemy succeeded really in passing the battie line.

SHEMY GOT TREGUES ACRUST'S FOR OF Why did the enemy macecod in journing the lattle lim? They broke through to the just of the professor through to the jeft of the American flact. On the intering of the battle the left of cont his chandling life, heaving the Viscon and of account was held by the throughput the Insan and attention was held by the throughput the Insan and the languisting of the leading from the experience grant of size the occupying what accounted pages 67th that four left was refused. That is the throughput did not confident to load the left by the trustle discussed loop, in the integlings of the social a furding the throughput had distanced loop. In the integlings of the social a furding the throughput had distanced the first through the first pages that the way of and decaying the I man that the latter of the first through the first pages that the stage of a social possible continuous for the sample of the possible of the pages that there is a social possible of the possible of the possible of the manual possible of the pages of the stage of the passed our align and alternative for emerge. The land, by which technicalizes the by tack the behaviors further away from the sustant key for the faction districted at the sury long, has executed white the righest to the faces to come up one firing.

Again, it is temperature to ear if officers of the faces to the sury land here continued in the surrounding state of the surrounding the surrounding providing when would be a land here to be the surrounding of the faces of the surrounding the artists. We had rope some of the state of th

again which agreed on every how of the the companion of the buttier! A the and Cold and Grip Come is sent to be were with the exception of a small temperary

fairness the matter could not be passed upon by the court. ORDERS ISSUED BY SAMPSON DURING THE

Incidentally it appears that during the progress of the battle Admiral Sampson gave orders to the vessels of the American fleet affecting their movements, notably sending the Indiana back to guard the entrance of the harbor and prevent any remaining Spanish gunboats from taking advantage of the absence of our fighting ships to the injury of unprotected transports.

advantage of the absence of our natural ships to the injury of unprotected transports.

The battle of Santiago naturally divides itself into three parts: First, the closing-up movement and destruction of the Pluton and Furor; second, the destruction of the Teresa. Oquendo and Viscaya; and third, the chase of the Colon. At the opening of the battle, when our fleet began to close in, the New York was in sight and probably nearer the east wing of the American line than was the Brooklyn. If the New York was within signal distance, as evidence, if heard, would probably show, then there is no doubt that Admiral Sampson was in command. During the first part of the engagement the New York and the Brooklyn both signalled to close up; but there is evidence indicating that neither of these signals was seen, or, if seen, that they accomplished nothing, the closing-up occurring without regard to them and in obedience to the general order issued by the Commander-in-Chief to cover just this contingency.

SCHLEY HIMSELF QUOTED TO PROVE THE NEW YORK WAS THERE.

With reference to the position of the New York in the early part of the battle, the following extract from Commodore Schley's report of July 6, 1898, is pertinent (Record, pages 1,515-18.):

The torpedo-boat destroyers were destroyed early in the action, but the smoke was so dense in their direction that I cannot say to which vessel or vessels the credit belongs. This doubtless was better seen from your flagship.

* The dense smoke of the combat shut out from my view the Indiana and the Gloucester, but as these vessels were closer to your flagship, no deubt their part in the conflict was under your immediate observa-

LIKE CASES OF GRANT AND SHERMAN.

LIKE CASES OF GRANT AND SHERMAN.

Nobody has ever disputed Grant's title to the victory at Appomattox, though then lying sick some miles from the place of surrender—so far that it was feared he could not be reached within the period of armistice. Though Howard was senior officer present at the capture of Savannah and Sherman absent on one of Admiral Dahlgren's gunboats, nobody has questioned Sherman's famous report to Lincoln:

"I beg to present you, as a Christmas gift, the city of Savannah."

SCHLEY AGAIN, CREDITING SAMPSON WITH

On this question of command and title to victory nothing can be more significant than Schley's statement in his despatch of Ju'y 10, 1898, to the Secretary of the Navy (Executive Document C, 55th Congress, third session, page 135):

Feel some mortification that the newspaper accounts of July 6 have attributed victory of July 4 almost entirely to me. Victory was secured by the force under the command Commander-in-Chief North Atlantic station, and to him the honor is due.

Again, in the twentieth paragraph of Schley's letter of Dec. 18, 1901, to the Secretary of the Navy, objecting to the approval of the findings of the Court of Inquiry, he justifies the loop on the express ground of the findings of the Court of Inquiry, he justifies the loop on the express ground that it was made "in the execution of the standing order to 'close in." If he went wrong, his excuse is that he was obeying orders. But if he was then himself in command, how happens it that he was executing the orders of somebody else in command?

Approval of Admiral Dewey's expression of opinion upon the question of command involves two points:

First, was Commodore Schley in "absolute" command during the battle of July \$?

Secondly—and quite a different proposition—is he "entitled to the credit due" for that victory?

The first point is a purely technical one, where we have the case of a running fight, covering a distance of about forty miles, and the question is affected by the naval practice of reaching distant ships by rerecating signals.

practice of reaching distant ships by repeating signals.

Upon the second point, whether Commodore Schley is entitled to the credit for winning that battle, the testimony from himself and his own witnesses is so conclusive as to leave no doubt. In the course of the proceedings before the Court of Inquiry, every prop raised to support the contention that Commodore Schley did anything to achieve the victory by issuing orders as commanding officer of the American feet was removed. The plain truth was for the first time revealed that Commodore Schley did not exercise command on that day over any ship except, to some on that day over any ship except, to some extent, his own flagship, the Brooklyn. As widespread misapprehension exists upon this point, sufficient extracts from the testimony will be quoted to show conclusively the facts as developed before the

As has been stated, Admiral Schley did As has been stated, Admiral Schley did not have anything to do with the disposi-tion of the forces of the American squadron made before the fight began, or with the standing battle orders issued. It has never been anywhere claimed that he is entitled to credit for that. It was all done by somebody else. It follows, then, that if he did win the battle it must have been by reason of orders given to the American ships during the fight. What orders did he give?

The natural place to look for such orders is the signal book of the Brooklyn, and careful analysis of the testimony shows them to be correctly given there, as follows:

9.36 A. M.—Brooklyn to fleet: "Clear

No orders except these two signals were given by Commodore Schiep to the fact from #85 A M, when the enemy's ships were discovered escaping, until after 1 15, when the 'Colon fired a lee gun and hauled down her flag,' and the battle was over the court but it is the whole is a meagre record, but it is the whole

It is a meagre record, but it is the whole story.

Let us examine these two orders. As to the first, at 930, Brooklyn to fleet, "Clear for action," it may be said that the fleet had been substantially cleared for action for over a month, that such clearing for action as remained to be done on board the several ships was not done in pursuance of this order, and, furthermore, that this signal was really hoisted without Committee Schier, a instructions by the signal officer of the Brooklyn "on his own hook." That these statements are true is shown by the following extracts from the testimony.

of the Brecordyn (Meoure james 1,000), and it has included around at the equations through a sing films, when the lower fail up the district films is a singular to an applied the films of the films of

tage, 4,880)

A Annual circulate some for exting. More than a name in a conditions to any preparation argue to the preparation of the first property of the circulate and the first property of the first property Mines proposal proposations of addresses as a street a probability declarated.

Into advices them the faregree declarated adult for action in paramoneus of a adaptibing strain of each act oppose eigenst front the Mesonsiary, and the advices by the tenthemory, was two of all the advices things from more than of a long of all the object things from more than of a long of the object.

The princip formula characters of the object them in parties is fugitary shown by the tenthemore of Lange. Element with emission is tempore (Record, page, 1966-6).

awning forward for the men and a small one aft, which took about three or four minutes to get down. The guns were loaded. She was cleared for action.

Q. Was any action taken in that respect in pursuance of a signal from the Brooklyn?

A. None that I know of, sir—none to my knowledge. That was a standing order from the time we arrived on the blockade. The Oregon was in that condition; in fact, from the time we left klio she was cleared completely for action with the exception of her boats, which she left at Key West.

The signal "Clear for action" not having been made by the Commodore's direction, but pro forma, only one order is left. That order was issued by Commodore Schley's express direction. The best testimony on this point is that of the signal officer of the Brooklyn, as follows (Record, page, 1,038):

The Commodore then came on deck, and I told him I had hoisted "Clear ship for action," and he said: "Hoist "Close up." We hoisted "Close up." We hoisted the Spanish ships as they were coming out.

the Spanish ships as they were coming out.

This signal "Close up," hoisted at 9:45, ten minutes after the action began, remained flying some time and was some minutes later seen and repeated by the Oregon. It was not seen from any of the other fighting ships, unless, perhaps, the Texas, and exercised no influence whatever upon any vessel of the squadron. As to that, testimony will be quoted later.

Admiral Schley's testimony respecting the issuance of this signalled order, "Close up," is interesting. After referring to the signal, "Clear ship for action," he said (Record, page, 1,387):

(Record, page, 1,387):

the signal, "Clear ship for action," he said (Record, page, 1,387):

That was followed by "Close up" or "Close action." The Brooklyn as well as the other vessels of the squadron charged immediately into the entrance in accordance with the original plan of sinking them in the entrance or driving them eahore there.

So that this order, the second of the two signalled from the Brooklyn during the battle of Santiago to the American fleet, was really formal also, and was given in accordance with Sampson's original plan of battle, which required closing up, with a view of sinking the Spanish vessels in the entrance. Surprising as this is, it is shown by Admiral Schley's own sworn testimony, and is corroborated by the time and circumstances under which the signal was made. It did not influence other ships. All the Captains had been advised of the plan of battle, and all "closed up" accordingly, without waiting or looking for signals from the Brooklyn, and paid no attention to this signal, which, as above stated, was not seen, except from the Oregon, and not from that ship until after all vessels had "closed up."

It is even more surprising, but it appears to be a fact, that Admiral Schley issued no further fleet order during the progress of the battle.

The full record of the Brooklyn's signals made during the action is as follows:

9:34 A. M.—Iowa to Brooklyn: "Enemy's ships escaping."

made during the action is as follows:

9:34 A. M.—Iowa to Brooklyn: "Enemy's ships escaping"

9:35 A. M.—Brooklyn to fleet: "Clear for action"

9:36 A. M.—Brooklyn to fleet: "Clear for action"

9:45 A. M.—Brooklyn to fleet: "Close up."

12:30 P. M.—Oregon to Brooklyn: "Flag of strange vessel seen is Italian"

12:35 P. M.—"She was built in Italy." (While chasing the Colon the Oregon fired a number of shots at her, and we wigwagged her where each one struck. A number of other unimportant messages were exchanged.)

1:15 P. M.—"Colon fired a lee gun and hauled down her flag."

OTHER UNIMPORTANT SIGNALS

other unimportant signals.

Efforts were made by Admiral Schley's attorneys during the course of the inquiry to show that unrecorded orders were signalled from the Brooklyn to the fleet. Some officers of the Brooklyn thought they recalled such orders, and Admiral Schley himself testified to having given several of them. His testimony is quoted in full in the appeal, and is misleading, in that it is not there stated that it was subsequently shown that the supposed signals were not actually made. It is to be expected that after the lapse of three years the memory of witnesses, upon points of this character, should be uncertain, and in some instances it is only by comparing their several statements in the light of the circumstances, and weighing the evidence, that the truth can be reached.

Among these supposed signal orders

cumstances, and weighing the evidence, that the truth can be reached.

Among these supposed signal orders were the following: Mr. Sears testified (Appeal Exhibit A. p. 34. Record. page 1.005):
Question by the Court—What orders, if any were signalled to the squadron by the Brooklyn from the time the Spanish squadron appeared, coming out, until the Coton ran ashore? A. The prescribed signal was bent on all the time, viz., that the Spanish fleet was escaping. That was the first signal made. The next signal was to close up. There was a signal, I think—I am guite positive—to the Oregon to cease firing when it was seen that the Viscaya was hopelessly out of it.

While Mr. Sears "thinke," indeed says he is "quite positive," that there was a signal to the Oregon to cease firing, it appears: (1) That no such signal is recorded. (2) That Lieut. McCauley himself, the signal officer

(1) That no such signal is recorded. (2) That Lieut. McCauley himself, the signal officer of the Brooklyn, who should have known of it if there had been such a signal, in re-sponse to direct questions on the subject, developing the whole story of the signals developing the whole story of the signals (Record, pages 1,030-1,046), made no mention of this one to cease firing. Admiral Schley himself, on the stand, did not refer to it, at least not specifically; and neither did Capt Clark when interrogated on the subject; nor did Lieut. Johnston, the signal officer of the Oregon. Under these circumstances it is safe to assume that an important signal, not of record, not recalled by the Commodore who is supposed to have ordered it hoisted, by the signal officer supposed to have sent it, by the signal officer of the ship to which it was addressed, or by the captain of that ship, was never sent.

sent.

Another signal occasionally mentioned in the testimony, from the Brooklyn to the Oregon is "Follow flag". This signal appears not to have been given, but the signal "Close up" was, it seems, confused with it in the minds of one or two of the witnesses. A further signal referred to is one from the Brocklyn to the Oregon to try the 13-inch guns upon the Colon. This signal, if sent—which seems extremely doubtful was certainly never received by the Oregon Discussion of these two signals follows

The other "unimportant" signals re-The other "unimportant" signals referred to in the Brooklyn's signal record
book were properly so characterized. For
example, the Brooklyn signalled to the
Oragon, "One of my compartments is full of
water (Record, page 1,200), certain information was given about a strange respecting where
shot fell were exchanged niso perhaps
a congratulatory message Nothing however, in the nature of orders.
So much from the standpoint of the Brookiyn, from which vessel orders simuld have
emansted, if the Commodors was during
the battle, exercising command. To com-

the battle, exercising command. To com-plete the inquiry it is measured to their new to the several fighting chips of the squadron, and from their standpoint, discover which of them, if any were manuscreed in that battle under others from Commodore Notice.

Bettle index of got from Commonses.

If Commonders fichier was 'in absolute common of during the battle of fractingto, and if he made any use of his authority, he must have constitued aoine constrol over some of the vecesses bartisquating lawing the Rose York out of consederation, the following American chips seem very actively and efficiency organized in the battle of features. hantlage

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Do you know whether there was any made or not? A. I do not."

How, then, is it possible for Admiral Schley to claim any credit for what the Indiana did in that battle?

(3) As to the Iowa: Admiral Evans (Record, page 380) was asked: "Under what instructions—verbal, written, or by signal—from the flagship Brooklyn did you manceuvre the Iowa during the naval battle of Santiago, July 3, 1898? A. I never saw any signals from her. I did not manceuvre in obedience to any signals from the Brooklyn. I did not see any signals aboard of her."

lyn. I did not see any signals aboard of her."

That settles the point of command so far as another battleship is concerned, the lowa.

(4) As to the Texas: The commanding officer of the Texas is not now living, but from the testimony of officers on board that vessel it is clear that during the battle of July 3 the Texas received no orders from the Brooklyn. On the contrary, her navigating officer says he saw little of the Brooklyn until by the unexpected loop made by that vessel the Texas was seriously endangered, as well as delayed and impeded (Record, page 127 et seq.), so that, in fact, she was obliged to reverse her engines and stop, in order to avoid collision when the Brooklyn turned away from the enemy and in tactical opposition to the other ships of the American fleet.

In the face of this testimony respecting the Texas, the question is not so much one of possible credit to but of possible censure of Admiral Schley, in connection with the work of that vessel in the battle of Santiago.

The alein truth is that Admiral Schley

with the work of that vessel in the battle of Santiago.

The plain truth is that Admiral Schley did not during the battle in any way direct or control the splendid performances of the Gloucester and the three battleships, Indiana, Iowa and Texas. The officers in command of these ships neither received nor obeyed a solitary order from him.

ceived nor obeyed a solitary order from him.

(5) There remains only the Oregon. Persistent attempts were made by Admiral Schley's attorneys to show that in some manner the Oregon at least acted under his orders during the battle; first, by answering the signal "Close up," made at 9:45, and afterward by firing her 13-inch guns under signalled order from the Brooklyn. If this could have been established it would have given some ground for the contention that Commodore Schley exercised over this one ship at least the powers of a fleet commander, and thus did something to merit the honors of Santiago. But the attempt, as the testimony to be quoted below shows, was a failure. It was not the fact that the Commodore did anything, and therefore it could not be established.

The navigating officer of the Oregon,

established.

The navigating officer of the Oregon,
Lieutenant Commander Reginald F. Nicholson, in response to the question, "Do you
remember any signals that were made
to the Oregon?" said (Record, page 1,110):

There were some signals made by the Brooklyn. One signal was made from the Brooklyn which was not to the Oregon, but which was a general signal, which was made, I suppose, about half an hour after the action commenced, somewhere thereabouts. That signal was, "Close up." Well, we were closing up then ourselves. Capt. Clark's memory as to what this

signal was appears not to have been per feetly clear. He says (Record, page 1,340) fectly clear. He says (Record, page 1,340):

I thought it was "Follow flag." It may have been "Close up." Q. Did you answer? Was there an answering signal to the Brooklyn, an answering pennant? A. It was answered in the customary way, by the answering pennant, and then we immediately repeated the signal to the other ships. Showing the answering signal was sufficient to say that we knew and received the signal Whichever signal it was, to "Follow flag" or to "Close up," we repeated it.

The signal officer of the Oregon says he repeated the Brooklyn's signal, "Close up,"

The signal officer of the Oregon says he repeated the Brooklyn's signal, "Close up," but says nothing about repeating "Follow flag." He "thinks" he caught a glimpse "for a minute" of a signal, "Follow flag," but the signal officer of the Brooklyn, whose duty it was to know all signals made by that vessel, does not mention "Follow flag" as a signal made during the battle; and as there is no record of it, we assume it was not made, and that, as Capt. Clark above intimates, it was confused with "Close up." The apparent confusion arising with respect to this signal, "Follow flag," is explained by the fact that such a signal was made by the Brooklyn and made to the Oregon; but, as the record shows, not during the battle, but at 4:20 P. M., after the surrender of the Colon and at the time when the Brooklyn and the Oregon were under instructions to go eastward to meet a supposed Spanish cruiser, which proved to be an Austrian man-of-war.

Again, on re-cross-examination by the

Again, on re-cross-examination by the Judge Advocate, Capt. Clark testified (Record, page 1,340): Captain, did you follow the flag orddid you follow the Spanish vessels? A Well, we remained about in echelon with the Brook-

punter line "But in a general ense I did follow the flag. The Brooklyn was ahead of us, and being a junior officer, was in a sense complying with the order, was in a sense not interfered with in the particular way in which I was attacking the spanish ships

That was the whole matter. Capt. Clark was not interfered with by any orders from the Brooklyn in the particular way

THE BATTLE POUGHT UNDER SAMPSON'S STANDING ORDERS.

Capt. Clark himself finally settles the question as to whether the Oregon "closed up" in obedience to the Brooklyn's signal or not, in the following question and answer on pages 1,887, 1,388 of the Record

on pages 1,837, 1,338 of the Record

You say, Captain, that you closed in during the early part of the engagement. In obedience to what orders did you do that? A That was a standing order in the squadron to attack the enemy at once if they appeared, and to keep the heads of the ships always lowered the entrance as I have stated before however, I will say that I did not stand in mediately in obedience to that order, because I think everybody started in at other when they saw the hyantards. It was their atty to attack them. I recalled that order a very few moments later, and I remember a feeing of satisfaction that there was an order to go in, in case any accident had happened any colliding with other ships.

pened any colliding with other ships.

Again, effort was made to show that the thinch guins of the forward turret of the Oregon, during the chase of the Colon, and just before the surrender of that vessel, were fired under orders from Commodore schiey; and some of the officers of the Brooklyn thought they recalled a signal to that effect. But there is no record of any such signal, and the signal officer of the Gregon, whose duty it was to receive all such messages, makes no mention of it. The matter was disposed of when (apt flark went on the stand by the following questions and answers (Record, page 1,339).

G. When you resumed firing, what guine. guardione and answers (Record, page 1,389)

g. When you resumed firing. What gues
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outh the officers Mr. Nicholson, who tall
lesse at prediction expert and others.

A last f consentant to fire installage, and to
live close After that we fired slowly, but
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The continuition that the imagnificers work of the Gregori or any part of it was store under others from the Brooklyn or that the throger received and obsered even a single order from them makes neither to the time of the continuition were nighted to the time of the exception of the Color wheel contents of the contents of the Color wheel contents of the contents of the Color wheel contents of the Color wheel contents of the contents of the Color wheel

Well Fed Well Bred You can pick

a steady user of

Grape-Nuts



No Danger Here. Let us talk about our warm friends **OVERCOATS** for instance, many of our

\$18 8 \$20 Opercoats reduced to \$15. \$30 & \$35 Overcoats reduced to \$25. \$25 Obercoats reduced to \$20.

\$18 & \$20 Suits reduced to \$12. \$22 Suits reduced to \$18. Hackett Carhart & Co.

BROADWAY Stores: Cor. 13th St. Cor. Canal St. Near Chambers St.

the close of the battle, must be abandoned and with it goes the last peg upon which to hang the pretence of a claim that during the battle of Santiago Commodore Schley effectively exercised any of the functions of a commander-in-chief. SCHLEY CONTROLLED HIS OWN SHIP, BUT

The weight of the testimony is to the effect that the Commodore controlled the movements of his flagship, the Brooklyn, well, with the exception of the loop. But it also shows, not negatively, but affirmatively and beyond question, that he did not control the operations of the fleet in general on that day.

All this is established not by theoretical deduction or expert or inexpert opinion, but by direct, positive, unimpeached and unimpeachable testimony, given under oath by the Admiral's 'brothers in arms."

The pages of the Record upon which their testimony is recorded are above cited.

The plain truth of the matter, therefore, developed for the first time under the searchlight of this inquiry, although quite incidentally, is that so far as the Gloucester, the Iowa, the Indiana, the Texas and the Oregon are concerned, not the stroke

ter, the lowa, the indiana, the rexas and the Oregon are concerned, not the stroke of a propeller blade, not the touch of a helm, not the firing of a shot, was done under the direction or by the orders of Admiral Schley during this memorable battle. We have the honor to be, sir, very respectfully,

SAMUEL C. LEMLY. Judge Advocate, Court of Inquiry
E. P. Hanna,
Assistant to Judge Advocate.

GEN. ROE FAVORS DICK BILL. Says It's a Thoroughly Good Measure for the National Guard.

Major-Gen. Charles F. Roe, commandng the National Guard of this State, said yesterday that the Dick bill providing for the uniform equipment of the National Guard troops and the creation of a reserve of experienced military men was a measure that he supported heartily.

"In my opinion," he said, "the Dick bill is a good one and one that should be adopted

by Congress. It provides for the calling out of the National Guard under the Con stitution as it is now called out by the President in time of need, and in so far as it affects the guard it does no more than practically to codify the laws as they are now. The arming of the guard with the same weapons as those in use in the Reg-ular army is a reform that will be of benefit

same weapons as those in use in the Regular army is a reform that will be of benefit
to the organizations throughout the whole
country. The men will be better armed
than they are now, and they will be able to
use the same arms in the field without
delay for practice.

That section of the bill that provides
for the enrollment of men who have seen
service in the Volunteer or Regular army
to the number of 100,000 will provide for a
trained force liable to call at any time,
which would be of great value to the country.

The bill proposes to make no changes
in the control of the State troops as they are
now constituted, nor in any way to extend
the power of the national Government
beyond what it possesses already under
the Constitution. The control of the troops
will stay where it is, of course, and all that
the bill seeks to do is to make the equipment and arms of the various bodies similar, nd arms of the var and to bring them under one code of gov-ernment so that they will have the same training when they are called on, if they ever are. I am in favor of the bill, and I think that it is a thoroughly good measure for the troops and for the States."

FINE FEATHERS IN HER TRUNK. Pelice Think Lizzle Roth Has Robbed Many of Her Employers.

Silk waists, lace petticoats, silk skirts, handkerchiefs and towels of the finest quality strewed the West 132d street police station last night. They were the contents of a trunk found at the home of Lizzie Roth. a colored servant, who until yesterday morning was employed by Mrs. Madge Brown of 427 West 126th street, a daughter of Police Inspector Walter Thompson.

On Wednesday Mrs. Brown missed a On Wednesday Mrs. Brown missed a gold watch and chain, which she valued at \$100. She told the police and detectives advised her to discharge her servant. As the girl was leaving the house they arrested her. Pinned inside her corset they found the watch and chain. She was remanded in the Harlem police court and last night the sleuths went to her home at 273 West 146th street and found the trunk containing the array mentioned.

The police believe it is the property of persons for whom the girl had previously worked. She had letters of reference from a Mrs. Adier of the Hotel Endicott and a Mrs. Smith of New Rochelle. The police will communicate with them and see if any of the stuff belongs to them. The police valued the contents of the truck at

many tell posterday over the exercise part of the take segions and the New England and Middle Atjuste made and rate to the Princeager Valley There may general constitutes to the contral billion could be accounted that an addition the second billion could be for the contral billion could be a second by the counter and the contral could be accounted and the counters and the angular pattern paint of the counters could be applicated that are successful to the pattern and applied to the loss of the counters and applied by the counter and applied by the counter and applied by the counters and applied to the counters and applied to the counters and the pattern and applied to the following the fol Atjantar higher and tate to the Tempenger Valley You represent the contrast of consisted for the

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TAMMANY CUSTOMS CARTER?

COLLECTOR THINKS KEAHON'S BID TOO LOW FOR SAFETY.

ammany Leader of the Seventh Bid S 1-2 Cents a Package, Against 10 Cents Bld by the Present Republican Contract-

or-Even the Latter a Cut Rate. The award of the contract for carting Appraiser's Stores packages at 814 cents package to Patrick H. Keahon, the Tamnany leader of the Seventh Assembly listrict, has stirred up George R. Bidwell, the Collector of the Port, who says the price is too low for good service. The collector has refused to let Keahon qualify

by filing a bond, and has protested to the Treasury Department against the award. Keahon held the contract when Collector Bidwell came into office and there was good deal of friction over his handling it. John J. Hanson, who is an active organization Republican, also of the Seventh Assembly district, succeeded Keahon about three years ago. Apparently Keahon has been watching his chance to get the

about three years ago. Apparently Keahon has been watching his chance to get the contract back ever since. At any rate the bids that were put in, according to experts, were so low as to mean actual loss in carrying out the contract. Hanson's bid was 10 cents, which was itself a cut rate. A man named Duffy bid a cents and Keahon 8½.

It was said yesterday that the average is not more than twenty-five packages to a load and that such a load must be hauled from any part of this port, including docks in Jersey City and Brooklyn. The contractor must have a full equipment of horses and trucks—say 100 horses and fifty trucks. Ten per cent. of the number of packages in each invoice, and more, if it is deemed desirable, are sent to the Appraiser's Stores. The average number handled is about 1,800 packages a day.

The new contract does not take effect until March 1. It is the second contract that the Treasury Department has awarded to a Tammany Leader of the Thirty-first Assembly district, got one of the contracts upon the new Custom House Building.

FIGHTS MRS. COHEN'S REBURIAL Ancient Hebrew Congregation Carries Its

Religious Scruples Into Court. Supreme Court Justice Maddox in Brookyn reserved decision yesterday on a moion for an order directing the Congregation Shearith Bnai Israel of Seventieth street and Central Park West to permit the removal of the body of Mrs. Adela Cohen from the congregation's cemetery at Cy-press Hills to the Mount Neboh Cemetery. The proceedings were begun by Howard Cohen, the son of the dead woman. His nother died in February, 1900, and was buried in the Cypress Hilis Cemetery. Daniel S. Cohen, the father died in April, 1901, and the children bought a plot in Mount Neboh Cemetery, where Mr. Cohen

was buried. The children now want to reinter the body of their mother beside that of her husband.

Lawyer Nathan of Cardoza & Nathan, opposed the application. He said the opposed the application. He said the congregation was orthodox and had been in existence for more than 259 years and that there was a deep religious sentiment among Hebrews that the bodies of those who died in the faith should not be disturbed after burial. He said the congregation had secured a burialplace on the Bowery and Oliver street, Manhattan,

"This has been most religiously mani-tained in its undisturbed integrity," said Mr. Nathan, "though the land is worth to-day over two millions of dollars." Mr. Nathan said that space had been reserved in the consetery at Cypress Hills by the side of Mrs. Cohen for the body of her husband and that his body could have been placed there.

RESCUED BY A BOMAN.

Skater Broke Through the Ice and She Pulled Him Out

BLOOMFIELD. N. J., Jan. 10 - Frank Sereno of Eccoud etreet. Bioconfield fell through the ice sestences while skaring eries for help were heard by a woman who was walking along the rational conbank was waiking along the rainous contacts, ment with a basiset of clothes on her head. She can end of a basiset to become tried to pull him out but the hiariset to become tried to pull him out but the hiariset partied on the middle. Then she are tried he need no the lice and reaching out granthed the skater by the hands and dropped into from the water. Without stouping to give her name she restored the basis tin her need and went on her way.

Mast & I. Phillips. Promoter dive-Figures from the petition in barriers; -of Simeon I. Puillipe, promoter

A group of particults on one mi-



Rheumatism

Money, Blanc Young, more

FIVE GALLONS, \$1.50